

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,)	
Complainant,)	8 U.S.C. § 1324a Proceeding
)	
v.)	OCAHO Case No. 97A00082
)	
ADRIANA FASHION, INC.,)	Judge Robert L. Barton, Jr.
Respondent.)	
)	

ORDER DISMISSING COMPLAINT WITHOUT PREJUDICE

(August 8, 1997)

On April 1, 1997, Complainant, the United States of America, filed a Complaint against Respondent, in the Office of the Chief Administrative Hearing Officer (OCAHO). On April 14, 1997, this case was assigned to me, and a copy of the Complaint and the Rules of Practice were mailed to the Respondent by certified mail, return receipt requested. The return receipt was not delivered to this office. However, on May 8, 1997, this office received a copy of a letter from an Andrew K, Chong, CPA, dated May 5, 1997, addressed to Ms. Mimi Tsankov of the INS, which asserts that the President of the Respondent, Adriana Fashion, died of cancer on March 9, 1997, that the company ceased operations on that date, and that the decedent left no estate. A copy of a death certificate for Mr. Pak was attached to the letter.

Since the complaint and notice of hearing had not been served on Respondent, and the Rules of Practice provide that "[i]n circumstances where the Office of the Chief Administrative Hearing Officer or the Administrative Law Judge encounter difficulty with perfecting service, the Chief Administrative Hearing Officer or the Administrative Law Judge may direct that a party execute service of process." 28 C.F.R. § 68.3(c). I ordered Complainant to effectuate service of the Notice of Hearing and Complaint, and a copy of the Rules of Practice on Respondent. Also, within thirty days of the date of the Order, Complainant was ordered either to provide the Court proof of service of the complaint, including the date upon which service was effectuated, or, if service was not effectuated, to file a status report detailing what efforts have been made to serve the complaint and what action Complainant wanted the Court to take with respect to this matter. Alternatively, the Order provided that if Complainant elected not to proceed with this case, it could file a motion to dismiss the complaint, with or without prejudice.

On July 16, 1997, Complainant moved to dismiss the complaint without prejudice. Neither

Respondent's counsel Ronald Fanta nor any other representative of Respondent has opposed the motion. Although the Complainant has not stated why it is seeking to dismiss the complaint, the present record does not indicate that the complaint has been served. Moreover, there appears to be significant doubt as to whether, given the death of the President and the assertion by its CPA that the company has ceased operations, that service can be achieved. OCAHO case law provides that when a complaint cannot be effectively served, it is dismissed without prejudice so that the Complainant may refile the complaint if the Respondent can be served at a later time within the period of the statute of limitations. See, e.g. United States v. Mayfly Fashion, 6 OCAHO 894 (1996); United States v. Iniquez-Casillas, 6 OCAHO 870 (1996).

Consequently, Complainant's motion is granted, and the complaint is dismissed WITHOUT PREJUDICE.

ROBERT L. BARTON, JR.
ADMINISTRATIVE LAW JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of August, 1997, I have served the foregoing Order Dismissing Complaint Without Prejudice on the following persons at the addresses shown, by first class mail, unless otherwise noted:

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